FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 18 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,
Appellant,

vs.

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AS TO JURISDICTION

DANIEL J. DUGAN,
Counsel for Appellant.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Dates of judgment and application for appeal	1
Statutory provisions sustaining jurisdiction	2
The statutes of the State the validity of which is involved	2
Nature of case and basis of jurisdiction	5
Cases believed to sustain jurisdiction	10
Appendix "A"—Opinion of the Court of Appeals of New York	18

Table of Cases Cited

Chamberlain, Inc. v. *Andrews*, 271 N. Y. 1, 299 U. S. 515, 301 U. S. 714	17
Civil Rights Cases, 109 U. S. 18	13
Coleman v. *Miller*, 307 U. S. 433	11
Coppage v. *Kansas*, 236 U. S. 1	11
Debs, In re, 158 U. S. 564	13
Gilbert v. *Minnesota*, 254 U. S. 341	14
Hague v. *C.I.O.*, 307 U. S. 496	11
Hall v. *DeCuir*, 95 U. S. 485	11, 13
Hoopeston Canning Co. v. *Cullen*, 318 U. S. 313	17
Illinois Central R. R. Co. v. *Illinois*, 163 U. S. 142	11, 13
Jackson, In re, 96 U. S. 727	13
Johnson v. *Maryland*, 254 U. S. 51	13
McGoldrick v. *Berwin-White Coal Co.*, 309 U. S. 33	11
Martin, 203 U. S. 284	16
Nashville, etc., Ry. Co. v. *Wallace*, 288 U. S. 249	17
Nebbia v. *New York*, 291 U. S. 502	11
New York Central R. R. Co. v. *Winfield*, 244 U. S. 147	16
Olsen v. *Nebraska*, 313 U. S. 236	11
Prigg v. *Pennsylvania*, 16 Peters 539	13
Rapier, In re, 143 U. S. 110	13
Price, 113 U. S. 218	16
Senn v. *Tilelayer's Protective Union*, 301 U. S. 468	11
Wolff Packing Co. v. *Ct. of Ind. Relations*, 262 U. S. 522	11

STATUTES CITED

	Page
Act of February 13, 1925, Ch. 229, sec. 1, 43 Stat. 936 amending Sec. 237(a) of the Judicial Code (28 U.S.C.A. 344), as amended by the Act of April 26, 1928, Ch. 440, 45 Stat. 466, amending Sec. 2 of the Act of January 31, 1928, Public No. 10, 70th Congress	2
Civil Practice Act of New York, Section 473	5,17
Civil Rights Law of New York:	
Section 41	3,6,8
Section 43	3,4,6,8
Section 45	3,4,6,8
Constitution of the State of New York, Article I, Section 6	6
Constitution of the Railway Mail Association, Article III	17
Constitution of the United States:	
Article I, Sec. 8, sub. 7	6
Article III, Section 1	17
Article III, Section 2	17
Fifth Amendment	6,12
Fourteenth Amendment	6,11
Labor Law of the State of New York:	
Article 20, Section 701, subdiv. 5	3,5,8
Article 20, Section 715	3,5,8
Postal Service Act, December 21, 1893, 39 U.S.C.A., 5 U.S.C.A., chap. 12, Section 652, as amended by the Auxiliary Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555 (5 U.S.C.A. 652)	13
Rules of Civil Practice, Sections 210–214	6,17

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, AS INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK, AND NATHANIEL L. GOLDSTEIN, AS ATTORNEY-GENERAL OF THE STATE OF NEW YORK,

Appellees

JURISDICTIONAL STATEMENT

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, the applicant, Railway Mail Association, submits herewith its statement showing the basis of the jurisdiction of the Supreme Court of the United States to review on appeal the final judgment of the Supreme Court of the State of New York entered in this cause upon the order and remittitur of the Court of Appeals of the State of New York which remittitur bears date July 19, 1944, and upon which said final judgment was entered in said Clerk's Office on July 31, 1944. Application for an order allowing an appeal to this Court was presented on October 11, 1944, to Mr. Justice Robert H. Jackson, a Justice of the Supreme Court of the United States.

Statutory Provision Sustaining Jurisdiction

The Act of Congress of February 13, 1925, Chapter 229, section 1, 43 Stat. 936, effective May 13, 1925, amending and reenacting Section 237 (a) of the Judicial Code (U. S. Code, Annotated, Title 28, Section 344) provides:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State Court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, amending section 2 of the Act of Congress of January 31, 1928, Public, numbered 10, Seventieth Congress; hereinbefore cited, provides:

> "Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

The Statute of the State, the Validity of Which is Involved

The statutes of the State of New York and portions thereof, the validity of which is drawn into question in this cause, are Sections 41, 43 and 45 of the Civil Rights Law of

the State of New York as amended in 1940 and 1942, being Chapter 6 of the Consolidated Laws of said State.

The validity of Sections 701, Subdivision 5, and 715 of Article 20 of the Labor Law of the State of New York, being Chapter 31 of the Consolidated Laws of said State, was not drawn in question but these Sections of the Labor Law were relied upon by the appellant upon its contention that they and Sections 41, 43 and 45 of the Civil Rights Law were related statutes and should be read together as part of a unitary system and so read would bring into play the denial of equal protection under the Fourteenth Amendment of the United States Constitution for the reason that under the Labor Law provisions employees of the State or its political subdivisions were exempted from the application and effect of Article 20 of the Labor Law.

Said statutes are herein set out verbatim as follows:

McKinney's Consolidated Laws of New York, Book 8 Civil Rights Law:

Section 41. Penalty for violation.

"Any person who or any agency, bureau, corporation or association which shall violate any of the provisions of sections forty, forty-a, forty-b or forty-two or who or which shall aid or incite the violation of any of said provisions and any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby or by any resident of this state, to whom such person shall assign his cause of action, in any court of competent jurisdiction in the county in which the plaintiff or

the defendant shall reside; and such person and the manager or owner of or each officer of such agency, bureau, corporation or association, and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment. As amended L. 1918, c. 196; L. 1932, c. 234, sec. 2; L. 1940, c. 9, sec. 2; L. 1941, c. 893, sec. 2; L. 1942, c. 478, eff. April 17, 1942."

Section 43. Discrimination by labor organizations prohibited.

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment will all other members in any designation of members to any employer for employment, promotion or dismissal by such employer. Added L. 1940, c. 9, sec. 1, eff. Feb. 14, 1940."

Section 45. Powers of administration vested in industrial commissioner:

"The industrial commissioner may enforce the provisions of sections forty-two, forty-three and forty-

four of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries. Added L. 1942, c. 677, eff. May 6, 1942."

McKinney's Consolidated Laws of New York, Book 30, Labor Law:

Section 701. Definitions.

"5. The term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection and which is not a company union as defined herein."

Section 715. Application of article.

"The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations. Added L. 1937, c. 443, sec. 1, eff. July 1, 1937."

Nature of Case and Basis of Jurisdiction

The plaintiff brought this action against the Industrial Commissioner of the State of New York and the Attorney-General of the State of New York to procure a declaratory judgment of the Supreme Court of said State pursuant to Section 473 of the Civil Practice Act of the State of New

York and Rules of Civil Practice 210-214 of the State of New York for a determination:

1. That Sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of Article 20 of the Labor Law have no application and do not apply to the plaintiff, Railway Mail Association, its members and Division and Branch Associations; and that the Railway Mail Association is not a labor organization within the meaning or contemplation of such laws.

2. That if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7; and of Articles Fifth and Fourteenth of the Amendments to said Constitution and to the provisions of Section 6 of Article I of the Constitution of the State of New York, and

3. That the Supreme Court declare and determine the rights of the parties herein.

4. And for further and consequential relief that the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure under the aforesaid provisions of the Civil Rights and Labor Laws against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof, and for such other and further relief as may be legal and equitable in the premises.

In substance, the plaintiff complains of an attempt on the part of the Industrial Commissioner of the State of New York to declare the plaintiff to be a labor organization within the meaning of Article 20 of the Labor Law and Section 43 of the Civil Rights Law of the State of New York, and to coerce the plaintiff to admit into its membership contrary to the provisions of its constitution. (See Complaint, paragraphs 6 to 12 inclusive; fols. 8-48.)

The plaintiff is a membership fraternal beneficiary corporation organized in the year 1898 under the laws of the State of New Hampshire, and has its principal office at the City of Portsmouth in that State. It was organized under the corporate name of "National Association of Railway Postal Clerks" which name was changed in 1904 to "Railway Mail Association" (fols. 11-12; fols. 91-93). It has no capital stock and was not organized for profit.

As stated in its Charter, "the object for which this corporation is established is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks, to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age."

Since September, 1913, plaintiff has been conducting the business of a fraternal benefit insurance corporation within the State of New York under the applicable provisions of the Insurance Law of said State and by the authority of the Superintendent of Insurance (Complaint, fol. 16; Letter of Superintendent of Insurance, dated September 4, 1913; Judgment, fols. 73-74). Membership is comprised of two classifications, one of which is a general or non-beneficiary membership, and the other is a beneficiary or full membership. The beneficiary members contribute to a benefit fund established by the levy upon said beneficiary members of assessments which benefit fund is created and maintained for the purpose of paying claims of such beneficiary members or their beneficiaries resulting from death or disability occasioned to said beneficiary members through external, vio-

lent and accidental means. The entire membership of the Association at the time of the commencement of this action comprised upwards of 22,000 members, 99% of whom hold beneficiary or full membership (Complaint, fols. 20-21).

Under Article III of the Constitution of said Railway Mail Association membership therein is confined to regular male Railway Postal Clerks or male substitute Railway Postal Clerks of the United States Railway Mail Service who are of the Caucasian race or are native American Indians. (Complaint, fols. 14-15)

It was the contention of the plaintiff set forth in its Complaint that its membership being drawn from male Railway Mail Clerks and substitutes in the Railway Mail Service whose appointments, promotions and classifications are defined and regulated under the Civil Service of the United States and the laws of the United States appertaining to the Federal Postal System, and in view of the purposes stated in plaintiff's Certificate of Incorporation the provisions of Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law of the State of New York did not apply to it because it was not a labor organization within the meaning of Section 43 of the Civil Rights Law and of Subdivision 5 of Section 701 and Section 715 of the Labor Law as the purposes of these laws being related to each other were aimed at and intended to apply to labor relations between employers and employees in the industrial system of our society and had no application to workers employed in the Civil Service of the United States. That if applied to the plaintiff, its division and branch associations and its members such statutes would be contrary to and violative of the provisions of Section 6 of Article 1 of the Constitution of the State of New York in that it would deny to the plaintiff and its members, and its division and branch associations due process and equal protection of law and

would be and constitute an unlawful and unreasonable abridgment of the property rights of the plaintiff and its division and branch associations, and would offend the due process provisions of the Fourteenth Amendment to the Constitution of the United States in that said provisions of the Civil Rights Law of the State of New York if applied to the plaintiff, its division and branch associations and its members created arbitrary, capricious and unreasonable regulations and denied to the plaintiff, its division and branch associations and members within the State of New York the equal protection of the laws and deprived the plaintiff, its division and branch associations and its members of their property without due process of law; and is an invasion of, and in contravention to Subdivision 7 of Section 8 of Article I of the Constitution of the United States concerning the legislative power of the Congress of the United States to establish postoffices and post-roads.

The issues raised by the pleadings and under stipulation of the parties were presented for determination at the Special Term of the Supreme Court of the State of New York which Court granted judgment for the plaintiff as prayed for in the Complaint upon a construction of the statutes holding that said statutes were without legal force or effect as applied to the plaintiff, its division and branch associations and its members within the State of New York. Upon the appeal to the Appellate Division the judgment at Special Term was reversed and the Complaint of the plaintiff was directed to be dismissed. The Appellate Division construing Sections 41, 43 and 45 of the Civil Rights Law as to apply to the plaintiff, its division and branch associations and its members and holding that the statutes as thus construed were not repugnant to the due process and equality provisions of the Fourteenth Amendment and that said statutes did not invade or violate the postoffice, post-roads clause of Article I, Section 8, Subdivision 7 of

the United States Constitution granting exclusive power to the Federal Government to establish postoffices and post-roads.

In the Court of Appeals the plaintiff's contention as to the construction of the statutes was rejected, such Court holding that Sections 41, 43 and 45 of the Civil Rights Law were applicable to the plaintiff, its division and branch associations and its members, the Court declining to apply the *in pari materia* principle of construction to Sections 41, 43 and 45 of the Civil Rights Law and Subdivision 5 of Section 701 and Section 715 of the Labor Law which the plaintiff had contended were related statutes and should be construed as dependent parts of a unitary plan dealing with related subjects of labor relations. In this way the Court decided that the exemptions of employees in the public service of the State or its subdivisions did not exempt them from the application of Sections 41, 43 and 45 of the Civil Rights Law. The Court, however, did pass upon the constitutional questions presented by the plaintiff under the due process and equality clauses of the Fourteenth Amendment, and the postoffices and post-roads clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States in which exclusive power is granted to the Federal Government to establish post-offices and post-roads, holding adversely to plaintiff's contentions.

Cases Believed to Sustain Jurisdiction

The plaintiff respectfully submits that the questions under the Constitution of the United States properly raised and actually decided by the State Courts and now sought to be presented to this Court are substantial Federal questions which as applied to the circumstances of this cause have not been previously decided by this Court con-

trary to plaintiff's contention and that this Court has jurisdiction to review. That the questions raised under the Constitution of the United States are important and novel in their application to the plaintiff and require analysis and exposition for their determination.

Senn v. *Tilelayer's Protective Union*, 301 U. S. 468;
Hague v. *C. I. O.*, 307 U. S. 496;
Coleman v. *Miller*, 307 U. S. 433;
McGoldrick v. *Berwin-White Coal Co.*, 309 U. S. 33;
Hall v. *DeCuir*, 95 U. S. 485;
Illinois Cent. R. R. Co. v. *Illinois*, 163 U. S. 142.

These questions were duly presented in this cause and have been passed upon by the New York State Appellate Courts and were actually decided by such Courts adversely to the plaintiff's contention. The following additional causes in this Court are cited to sustain jurisdiction:

(a) Under the Due Process Clause of the Fourteenth Amendment.

Coppage v. *Kansas*, 236 U. S. 1;
Wolff Packing Co. v. *Ct. of Ind. Relations*, 262 U. S. 522;
Nebbia v. *New York*, 291 U. S. 502;
Olsen v. *Nebraska*, 313 U. S. 236.

In the *Nebbia* case arising out of a price-fixing statute of the State of New York the Act was challenged as being arbitrary and unreasonable under the due process clause of the Fourteenth Amendment. In the majority opinion a long line of previous cases in this Court was set forth where the legislation under review was sustained under the police powers against the challenge of the due process clause of the Fourteenth Amendment; and in the opinion read for the minority members of this Court a similar

long line of previous cases in this Court was likewise set forth in which this Court had struck down state legislation as being arbitrary and unreasonable. In the majority opinion, page 536, Mr. Justice Roberts says:

"It is clear that there is no closed class or category of businesses affected with a public interest and the function of Courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory."

And at page 539, he continues:

"The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control like any other form of regulation is unconstitutional only if arbitrary, discriminatory or demonstrably irrelevant to the policy the legislature is free to adopt and hence an unnecessary and unwarranted interference with individual liberty.

"Tested by these considerations we find no basis in the due process clause of the Fourteenth Amendment for condemning the provisions of the Agricultural and Markets Law here drawn into question."

It is respectfully submitted that the business of the appellant as it is conducted inflicts no injury upon the public at large or upon any substantial group of the people or in any way affects adversely the economic status of any regular or substitute Railway Mail Clerk or of any member of the public. The case at bar is not a tax case, nor a price-fixing case, nor a labor relations case, nor a wage and hour case, nor is the business of the appellant subject to any license regulation. The appellant derives no benefit, economic or otherwise, under the labor relations provisions of New York State's Labor Law and to apply Sections 41,

43 and 45 of the Civil Rights Law to the appellant's organization or to its free choice in the selection of its members, clearly constitutes an arbitrary and unreasonable regulation of its business and is an arbitrary and unreasonable interference with the property rights and the liberty of contract guaranteed by the due process clause of the Fourteenth Amendment to the appellant, its division and branch associations and members.

(b) Under the Postoffice and Post-Roads Clause of Article I, Section 8, Subdivision 7 of the Constitution of the United States.

Re Jackson, 96 U. S. 727;
Re Debs, 158 U. S. 564;
Hall v. *DeCuir*, 95 U. S. 485;
Prigg v. *Pennsylvania*, 16 Peters 539;
Civil Rights Cases, 109 U. S. 18;
Re Rapier, 143 U. S. 110;
Illinois Central R. R. Co. v. *Illinois*, 163 U. S. 142;
Johnson v. *Maryland*, 254 U. S. 51;
Postal Service Act, Dec. 21, 1893, Code Title 39 U. S. C. A;
Code Title 5 U. S. C. A., chapter 12, session 652.

The Postal Service Act, December 21, 1893, Code Title 39 U. S. C. A., creates the postal system in all its various branches and it was the design of Congress thereby to appropriate the entire field of the postal service and its regulation, and the Auxiliary Act of August 24, 1912, c. 389, Section 6, 37 Stat. 555, being Section 652 of Code Title 5 U. S. C. A., manifests a clear intent on the part of Congress to show its concern regarding membership in any society, association, club or other form of organization of postal employees. Congress having established and organized the postal system in all its branches and in varying detail has exercised

the federal power granted to the general government under the Postoffice and Post-Roads clause: The Act of Congress of August 24, 1912, aforesaid, is a regulation affecting the conduct of postal employees in relation to their service, and their right to organize for the improvement of working conditions and for other benefits. The State Act, Sections 41, 43 and 45 of the Civil Rights Law, so far as employees of the postal system are concerned, cannot be tacked onto the regulations made by Congress, for the State is excluded from legislating in this field. The prohibition of State action rests "not upon any consideration of degree but on the entire absence of power on the part of the States to touch the instrumentalities of the United States" (Opinion of Justice Brandeis in *Gilbert* v. *Minnesota*, 254 U. S. 341, citing the *Johnson* case supra).

The exclusive character of the power given to Congress to establish postoffices and post-roads as Mr. Justice Fields said in the Jackson case "has been practically construed since the foundation of the government to authorize not merely the designation of the routes over which the mail shall be carried and the offices where the letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents".

In the Debs case, Justice Brewer says:

"What are the relations of the general government to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management. While under the dual system which prevails with us the powers of government are distributed between the state and the nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts di-

rectly upon the citizen, and not through the intermediate agency of the state.

"The government of the Union, then is, emphatically and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

In the Civil Rights cases Justice Bradley after referring to the enumerated powers granted to the general government in the Federal Constitution says at page 18:

"In these cases Congress has power to pass laws for regulating subjects specified in every detail and the conduct and transactions of individuals in respect thereof."

In *In re Rapier*, one of the lottery cases which involved a construction of an act of Congress in excluding from the mails lottery matter, the Court says:

"That power may be abused, furnishes no ground for denial of its existence if the government is to be maintained at all; it must be left to Congress in the exercise of a sound discretion to determine in what manner it will exercise a power which it possesses.

"When the power to establish postoffices and post-roads was surrendered to the Congress it was as a complete power, and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that Congress should have the power to deal with crime or immorality within the states in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."

In *Hall* v. *DeCuir*, Justice Clifford in the course of his opinion said:

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given

manner and in a certain form, it cannot be that the State Legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. The Chusan, 2 Story, 466; Sinnot v. Davenport, 22 How. 227, 16 L. Ed. 243.

> "In such a case, the legislation of Congress in what it does prescribe manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. Prigg v. Com. of Pa., 16 Pet., 539; Gibbons v. Ogden (supra); Bk. v. Smith (supra)."

In *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147, where the New York State Workmen's Compensation Law as applied to interstate commerce was rejected, as in conflict with the Federal Employee's Liability Act, the above text is repeated.

In arguing for the exclusiveness of federal power to regulate persons, matters and things pertaining to the postal service, we are not conceding that legislation of the pattern presented by the State law in question could withstand the challenge of its validity under the due process clause of the Fifth Amendment to the Federal Constitution. What we do say is that if Congress can regulate what organizations of employees in the postal system may do, it alone has the right, should it see fit to exert it, to pass legislation forbidding discrimination as to the qualifications for membership in the organizations of its employees on the ground of race, creed or color.

The *Price* case, 113 U. S. 218, and the *Martin* case, 203 U. S. 284, merely decided that the Pennsylvania statute under review did not present to the Court a federal question.

The railroads had been sued to recover for injuries to a Railway Mail Clerk in one case and for the death of a Railway Mail Clerk in the other, alleged to have been caused by the negligence of the defendants, and all that was decided was that the Railway Mail Clerk was not a passenger and had no greater rights in the event of being injured in the course of his employment than would have had an employee of the Railroad Company. The Railway Mail Clerk had no special or exceptional immunities because of his employment. He was not a passenger within the meaning of the Act.

(c) The procedure in this case for declaratory judgment with prayer for injunctive relief was authorized under Section 473 of the Civil Practice Act of the State of New York, and the Rules of Civil Practice, Sections 210-214, and is a "case" or "controversy" within the meaning of the judiciary article of the United States Constitution (Const. Article III, Sections 1 and 2).

Nashville, etc. Ry. Co. v. *Wallace*, 288 U. S. 249.
Hoopeston Canning Co. v. *Cullen*, 318 U. S. 313.
Chamberlain Inc. v. *Andrews*, 271 N. Y. 1; affd. 299 U. S. 515; 301 U. S. 714.

In view of the foregoing, it is respectfully submitted that this honorable Court has jurisdiction of the appeal.

RAILWAY MAIL ASSOCIATION,
Appellant.

BY DANIEL J. DUGAN,
Its Counsel.

APPENDIX

Opinion of Court of Appeals

79—N. Y. Opinion—Vol. 293—315

RAILWAY MAIL ASSOCIATION, *Appellant*,

v.

EDWARD S. CORSI, as Industrial Commissioner of the State of New York et al., *Respondents*

Decided July 19, 1944

Appeal from a judgment, entered March 13, 1944, upon an order of the Appellate Division of the Supreme Court in the third judicial department which reversed, on the law, a judgment of the Supreme Court, Albany County, in favor of plaintiff, entered upon an order of the court at Special Term (Murray, J.; opinion 180 Misc. 868); (1) declaring, among other things, that plaintiff is not a labor organization within the meaning of section 43 of the Civil Rights Law, and (2) restraining the defendants, the Industrial Commissioner and Attorney-General of the State of New York, respectively, from enforcing said statute against the plaintiff. The Appellate Division directed a dismissal of the complainant and the judgment appealed from so provides. At the commencement of the action Frieda S. Miller was Industrial Commissioner and John J. Bennett, Jr., was Attorney-General. Respondents now hold and occupy their respective offices and have been substituted as parties defendant.

Daniel J. Dugan and *Daniel J. Dugan, Jr.*, for appellant.

Nathaniel L. Goldstein, Attorney-General (*Wendell P. Brown, Orrin G. Judd* and *Henry S. Manley* of counsel), for respondents.

LEHMAN, Ch. J.:

The plaintiff is a foreign corporation organized under the laws of the State of New Hampshire. It conducts its affairs through Division and Branch Associations. Thir-

teen Branch Associations are located in different parts of the State of New York. Membership in the Association is confined by the terms of its constitution to "any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service who is of the Caucasian race or a native American Indian." Section 43 of the Civil Rights Law (added by L. 1940 chapter 9) provides in part that "*no labor organization* shall hereafter, directly or indirectly * * * deny a person or persons membership in its organization by reason of his race, color or creed * * *." Violation of the Statute is a misdemeanor punishable by fine or imprisonment or both. The plaintiff has brought an action for a declaratory judgment "that sections 41, 43 and 45 of the Civil Rights Law of the State of New York and the provisions of the Labor Law, * * * do not apply to the plaintiff * * *" and that the Railway Mail Association is not a labor organization within the meaning and contemplation of said laws." The plaintiff also asks the court to declare "that if sought to be applied to the plaintiff herein such laws are in contravention to the Constitution of the United States, Article I, Section 8, Subdivision 7, and of Articles Fifth and Fourteenth of the amendments to said Constitution and to the provisions of Section 6 of Article 1 of the Constitution of the State of New York." As "consequential relief" the plaintiff asks that "the Industrial Commissioner of the State of New York be enjoined from taking any action or procedure against the plaintiff or its Division or Branch Associations within the State of New York, or the officers or members thereof."

The defendants have admitted all the allegations contained in the complaint except the allegation that the plaintiff is not a "labor organization" within the meaning of the statute. The issues raised by the pleading were by stipulation of the parties submitted to the court at Special Term "as though upon a motion by the plaintiff for summary judgment as prayed for in the complaint and upon a cross motion by the defendants that the complaint be dismissed." No testimony was offered at the hearing and no affidavits were submitted but the parties stipulated

that specified documents, books and pamphlets may be considered as exhibits. At Special Term the plaintiff prevailed and judgment in its favor was granted declaring that "plaintiff is not a labor organization within the meaning or contemplation of Sections 41, 43 and 45 of the Civil Rights Law of the State of New York nor within the meaning and contemplation of Article 20 of the Labor Law of the State" and enjoining the Industrial Commissioner "from taking any action or procedure to apply or enforce" these statutes. The Appellate Division unanimously reversed on the law the judgment in favor of the plaintiff and granted judgment in favor of the defendants dismissing the complaint. The dismissal of the complaint is based upon the conclusion of the court that the provisions of section 43 of the Civil Rights Law apply to the plaintiff Association and may be enforced against it by the Industrial Commissioner. If we agree with that conclusion we need not consider whether if section 43 of the Civil Rights Law did not apply to it, the plaintiff could obtain in an action for a declaratory judgment the relief it demands.

Section 43 of the Civil Rights Law, which forbids a "labor organization" to deny membership to a person by reason of his race, color or creed, provides its own definition of the term "labor organization". *As used in that section*, the term "labor organization" means any organization "which exists and is constituted for the purpose in whole or in part of collective bargaining, *or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection.*" The purpose for which the plaintiff is constituted, as formulated in its charter, is "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among Railway Postal Clerks; *to better enable them to perfect any movement that may be for their benefit as a class* or for the benefit of the Railway Mail Service; to provide relief for its members and their beneficiaries and make provisions for the payment of benefits to them, in case of death, sickness, temporary or permanent physical disability, either as a result of disease, accident or old age." (Italics through this opinion are supplied.)

The purpose of "collective bargaining" is not included in the objects for which the plaintiff exists and is constituted. Membership in the plaintiff is confined to mail clerks who are civil service employees and the plaintiff and the defendants agree that the terms and conditions of employment of civil service employees of the Post Office and of other departments or agencies of the Federal, State or City government must be fixed by governmental authority and not by collective bargaining. The purpose of "mutual aid or protection" and in proper case of discussing grievances with their employer and presenting demands or suggestions of their members *as a class,* is included by plain implication in the purposes set forth in the charter. Indeed, among the duties of the Industrial Secretary of the organization, prescribed in its constitution, is the duty to "assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action." The plaintiff joined the American Federation of Labor, which purports to be a federation of labor unions. It is denominated a labor union in the Bulletin of the Department of Labor of the United States. It is described as a trade union or labor organization in publications and reports concerning phases of the labor movement by students and organizations of recognized authority, including a recent publication of the Twentieth Century Fund. In its own publications the plaintiff Association claims the credit for bringing "to every railway postal clerk many material benefits" and for "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and it points out that "reforms always come as the result of demands from the worker. If better conditions are worth securing, they must come as the result of organized effort." An association constituted for the purpose of "organized effort" and the presentation of concerted demands of workers as a class in order to secure material benefit and reforms in conditions of employment is a "labor organization" both in common parlance and as defined in section 43 of the Civil Rights Law.

That is true though the association may exist and be constituted "in part" for other purposes. In this case the plaintiff association conducts, pursuant to its charter, "the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit" and it furnishes insurance at cost to its members. Pursuant to its charter and ritual the plaintiff also seeks "to promote closer social relations among Railway Postal Clerks" or rather among white Railway Postal Clerks eligible for membership in its Association. If these were its only objects it would not be a labor organization and would be free to admit to or exclude from membership such persons as it chose, for good reason, for bad reason or for no reason, but it is undisputed that its objects are not so limited. Indeed, in its own publication it has said: "The activity of the Association is directed along two lines, promoting the welfare of railway postal clerks by improving conditions under which they work and providing benefits for disability and death due to accidental means." To carry out the second activity within the State of New York, the plaintiff Association applied for and received permission to do so from the Superintendent of Insurance, though he ruled that no license was necessary. The facts that the Association is lawfully providing insurance within the State for its members does not tend to show that its members are not associated in an organization which exists and is constituted "in part" for objects which mark it as a "labor organization" as defined in the Civil Rights Law.

The plaintiff Association successfully urged at Special Term that the definition in the Civil Rights Law must be read in connection with the provision of article 20 of the Labor Law entitled "New York State Labor Relations Act" and that so read the Association is excluded from its terms. Article 20 of the Labor Law is enacted primarily as an appropriate measure for "the protection by law of the right of employees to organize and bargain collectively" (Labor Law, Sec. 700). Like section 43 of the Civil Rights Law, article 20 of the Labor Law provides its definition "*when used in this article*" of the term "labor organization" and other terms. (Sec. 701.) The words "when used

in this article" show a legislative intent to create special definitions of limited application which are not to be enlarged or restricted by other definitions of the same terms contained in other statutes or in other parts of the Labor Law. (*Metropolitan Life Ins. Co.* v. *State Labor Relations Board*, 280 N. Y. 194.)

The definitions of "labor organization" in section 43 of the Civil Rights Law and in article 20 of the Labor Law are the same except in one clause and the variation is not here material. The contention of the plaintiff Association is not based upon that variation. Its reliance is upon section 715 of the Labor Law which provides: "The provisions of this article shall not apply to the employees of any employer who concedes to and agrees with the board that such employees are subject to and protected by the provisions of the national labor relations act or the federal railway labor act or to employees of the state or of any political or civil subdivision or other agency thereof, or to employees of charitable, educational or religious associations or corporations."

The purpose of section 715 is expressed in plain language. It does not purport to change the definition of the term "labor organization." It does not in terms or in effect prohibit the formation of labor organizations as so defined among the employees of any employer, but it does exclude *from the application of article 20* of the Labor Law the employees in specified employment and it denies to such employees, whether members of labor organizations or not, the benefit of the provisions of the statute devised for "the protection of employees' right to organize and bargain collectively." The exclusion of some categories of employees from the application of the statute constitutes a legislative determination that the "public policy of the state" as "declared" in the same article would not be promoted by "encouraging the practice and procedure of collective bargaining" by government employees. The grounds for that determination are plain. Section 43 of the Civil Rights Law is intended to promote the public policy securing equality of industrial opportunity for workers, regardless of race, creed or color. There is no

indication either in the Civil Rights Law or in the Labor Law that categories of workers who are not entitled to avail themselves of the benefit of the provisions of a statute enacted for the protection of a right of collective bargaining may not lawfully form "labor organizations" for their "mutual aid or protection" in their employment and for the presentation of their grievances as a class and of demands for reform in the terms and conditions of their employment, nor is there anything in the Civil Rights Law which suggests that workers within categories excluded from the application of the State Labor Relations Law are also excluded from the application of the Civil Rights Law.

There remains only the question whether a statute intended to restrict discrimination in membership by labor organizations is constitutional if applied to the plaintiff Association. The plaintiff does not challenge the validity of a statute which would prohibit such discrimination by "labor organizations" to which the provisions of article 20 of the Labor Law apply. It challenges the validity of the statute, if construed in manner broad enough to include the plaintiff in its scope, on the ground that the exclusion of categories of workers from the application of article 20 and their inclusion in the application of section 43 creates "arbitrary, capricious and unreasonable classifications" which denies to the plaintiff organization the equal protection of law guaranteed by the Fourteenth Amendment of the Federal Constitution and denies to the plaintiff due process of law. The plaintiff challenges the validity of the statute also on the ground that it constitutes an invasion by the State into the field of postal service which under the Constitution is within the sole jurisdiction of the government of the United States.

The plaintiff in its brief makes abundantly clear the grounds upon which the Legislature might reasonably deny to civil service workers in the employ of a governmental unit the benefit of a statute intended for the protection of the right of workers in other employment to bargain collectively with their employers. In its own official publication the plaintiff also makes abundantly clear the grounds

upon which the categories of workers excluded from the application of the provisions of article 20 of the Labor Law may reasonably be included in the application of the provisions of the Civil Rights Law designed to give workers of every race, creed or color equality of opportunity to join organizations intended for collective action to improve the condition of employment of the workers. In its official magazine, "Railway Post Office," the plaintiff published an article by its Industrial Secretary in which it said: "Only through collective action have workers ever improved wage and working standards, but it is particularly true today that the worker whether in industries or *the government service* who is not a member of his group organization is merely an unheard voice crying in the wilderness." Whether or not these statements are wholly accurate is immaterial. At least they are not without foundation and the Legislature does not act arbitrarily or capriciously when it determines that no association of workers, whether in industry or in the civil service, which undertakes to speak and act collectively for such workers in improving wages and working standards may deny membership to a worker because of race, creed or color relegating him to the wilderness where he must cry unheard.

The statute so construed does not impinge upon the powers of the Federal Government to conduct the mail service. The United States Government has recognized the right of mail clerks to organize for collective action in the presentation of grievances though not for collective bargaining. A statute in general terms which prohibits all labor organizations within this State, including organizations of workers in government service, from discriminating on the ground of race, creed or color violates no public policy of the United States, does not interfere with or impede any government service and invades no field from which the State is excluded by the Constitution.

The judgment should be affirmed, with costs.

Loughran, Rippey, Lewis, Conway, Desmond and Thacher, J. J., concur.

Judgment affirmed.